

1992

State of Utah v. Gregory Hunter : Reply to Brief in Opposition

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

GREGORY T. HUNTER,	:	
	:	
Petitioner/Defendant,	:	
v.	:	Priority No. 11
	:	Case No. 910319-CA
STATE OF UTAH,	:	
	:	
Respondent/Plaintiff,	:	

STATE OF UTAH,	:	
	:	
Plaintiff/Appellant,	:	920246
v.	:	
GREGORY T. HUNTER,	:	
	:	
Defendant/Appellee.	:	

REPLY TO RESPONDENTS BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE UTAH SUPREME COURT

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UTAH

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- - - - -

The opposition brief filed by respondent raises issues which petitioner seeks to briefly clarify.

I. THE ANALYSIS OF STATE V. LAROCCO IS NOT LIMITED TO
AUTOMOBILE SEARCHES.

Respondent argues that this Court's decision in State v. Larocco, 794 P2d 460 (1990), applies only "in the limited context of automobile searches." (Respondent's Brief in Opposition p.7). This assertion is erroneous. The Larocco opinion painstakingly details the application of State and Federal constitutional provisions to the area of search and seizures generally. Id. 465-67. The opinion notes that U.S. Supreme Court interpretation of the Fourth Amendment generally,

and automobile searches in particular, is a source of much confusion. Id. 466. The Court explicitly recognizes that an individual's expectation of privacy is the threshold for Article 1, Section 14 applicability and reiterates that once such an expectation is established a warrant or exigent circumstances must be present.

If this analysis is appropriate in the context of an automobile, such protections surely exist in the context of home or apartment searches. To the extent respondent argues that the carefully drawn protections outlined in State v. Larocco are inapplicable to an individuals home or apartment, respondent is wrong.

II. THE ANALYSIS OF NEW JERSEY V. T.L.O. IS NOT APPLICABLE TO THE PARTICIPATION OF A POLICE OFFICER IN THE SEARCH.

Respondent relies on New Jersey v. T.L.O 469 U.S. 325 (1985) for the apparent proposition that the participation in this search by a police officer was insignificant. T.L.O. involved a High School student whose purse was searched by a vice-principal. There was no police involvement whatsoever in the search or investigation. T.L.O. is clearly not this case and any implication as to how the Court would have treated the involvement of police is purely speculative. The search here did in fact involve a police officer from its inception. The authority relied on by Hunter in his main brief is relevant and directly on point. Officer Steven Milne is not a public school official or merely a state actor. He is a police officer within

the jurisdiction of the Utah State University campus and vested with all powers of any law enforcement official. Under these circumstances, absolute adherence to the Fourth Amendment and Article 1, Section 14 principles and protections is required M.J. v. State of Florida, 399 So. 2d 996 (Ct. App. Fla. 1981). The Court of Appeals, contrary to the assertion by respondent, did not adequately analyze the involvement of Officer Milne and the fact that such involvement mandated conformance with the fourth amendment and Article 1, Section 14 protections.

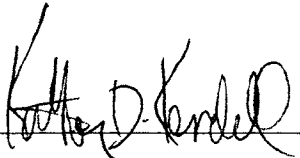
III. ANY LEGITIMATE UNIVERSITY PURPOSE FOR THE SEARCH WAS
INVALIDATED BY THE SUBSEQUENT PROSECUTION OF MR.
HUNTER.

Respondent devotes a substantial portion of its opposition brief to the proposition that the search in question was initiated for University purposes and therefore lawful. However, the search of Mr. Hunter's dormitory room did not uncover evidence of any activity which lead officials to conduct the search in the first place. Instead, the search of Hunter's room discovered allegedly stolen items wholly unrelated to the alcohol abuse and dormitory vandalism which provided the apparent need for the search. A rule allowing a University to articulate an arguably "university purpose" for a search which then results in criminal prosecution for activity entirely unrelated to the search purpose invites abuse. At the very least, the University should be required to confine any disciplinary action or penalty to that related to the conduct sought to be proscribed. If indeed a search is conducted to discover evidence of dormitory

and alcohol use, the outcome of such a search must comport with its purposes.

Dated this 23rd day of June, 1992.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT